

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4481 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI KESHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR GR SHAIKH for Petitioners

MS. HARSHA DEVANI, AGP, for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/09/1999

ORAL JUDGEMENT

The prayer in this writ petition is for quashing the order contained in Annexure-C to the writ petition passed by the Secretary (Appeals) of the State of Gujarat. This writ petition was admitted on 1.11.1996. Notice was thereafter issued for final hearing of the petition. No counter affidavit has been filed by the respondent so far. None appears for the petitioner though the case was called out thrice. As such the allegations

in the petition were examined so also brief account of the impugned orders.

Public auction of the plots of survey No. 164 and 170 of Salatpur taluka, Prantij, Dist. Sabarkantha was held by the Taluka Development Officer, the competent authority, to conduct such public auction. The purchasers of the plot paid the bid price as per the bid in the auction. There was also agreement between the purchasers and the competent authority which was binding between the competent authority and the purchasers. Since the land vested in the panchayat the price realised in the auction was utilised by the panchayat. Out of 50 persons to whom 50 plots were auctioned, 20 persons had already constructed their residential premises and the rest of the plot holders have completed construction upto plinth level which would come to about 40% of the construction. Because of their weak financial position they were unable to complete the construction. Auction was held in the year 1973. Permission to construct building was granted in the same year and constructions were completed in the year 1973 i.e. in the same year. The purchasers were paying taxes to the panchayat as well as to the competent authority as provided under the Bombay Land Revenue Code and under the Panchayat Act. It is alleged that at the instance of some dissatisfied persons, an application was moved that the auction was not conducted in accordance with law and irregularities were committed in the said auction. It was prayed that the auction be set aside. After a period of about 10 years the Deputy Collector, Modasa took the matter in suo motu revision under Section 211 of the Bombay Land Revenue Code in the year 1982. Show cause notice was issued to the purchasers. The Deputy Collector, Modasa by order dated 21.2.1983 set aside the auction sale holding that the procedure in the matter of public auction was not legal. Annexure-A is the order of the Deputy Collector, Modasa. The petitioners feeling aggrieved filed appeal before the Collector, Sabarkantha, Himatnagar in the year 1984 which was rejected on 29.5.1984 vide Annexure-B to the petition. The petitioners feeling aggrieved against this order preferred revision before the Secretary (Appeals) in the year 1984 which was dismissed on 16.12.1985. The order of dismissal was communicated to the petitioners on 27.2.1986 Annexure-C. Feeling aggrieved by the order Annexure-C, the petitioners have filed this writ petition.

It seems from the relief clause that the petitioners have sought for quashing the order at

Annexure-C. The relief clause is not happily worded inasmuch as unless Annexures A and B are cancelled, no fruitful purpose will be served by quashing Annexure-C. It is clear from the submissions made in the writ petition that the auction was conducted in the year 1973. The possession was delivered to the petitioner in the same year. They obtained permission to construct from the panchayat and also raised construction in the same year. As many as 20 persons who purchased plots were successful in raising construction in the year 1973. The remaining 20 persons, on account of poor financial condition, could not complete the construction. They raised construction upto plinth level which according to them was construction covering 40 per cent.

The grievance of the petitioners in the writ petition is that suo motu action under Section 211 of the Bombay Land Revenue Code could not be taken after a lapse of about 10 years. Suo motu action was taken in the year 1982 whereas the auction was completed in the year 1973. The possession was also delivered in the year 1973. As many as 20 persons completed constructions in the year 1973 and the remaining raised constructions upto plinth level. No reason has been given nor any counter affidavit has been filed to show as to how suo motu action was taken under Section 211 of the Bombay Land Revenue Code by the Deputy Collector, Modasa, in the year 1982, say after about 10 years. No doubt, no limitation is prescribed under Section 211 of the Bombay Land Revenue Code for taking action suo motu but there has been consistent judicial view that such action has to be taken within a reasonable time and reasonable time in matters where permission is granted under Section 65 of the Bombay Land Revenue Code has been considered to be three months and in other matters one year from the date of the order. Since suo motu action was taken in the instant case after about 10 years and since no explanation is forthcoming, how irregularity in the auction sale was noticed after a lapse of such long period, it has to be held that the suo motu action was not taken within a reasonable time. If suo motu action was not taken within a reasonable time, the orders contained in Annexures A, B and C cannot be sustained. The three authorities below did not consider this aspect of the matter. In the absence of counter affidavit from the respondent it has to be held that there is no satisfactory explanation for such a long delay in taking suo motu action. The petition has, therefore, to be allowed and is hereby allowed. The orders of the Deputy Collector Annexure-A, of the Collector Annexure-B, and of the Secretary (Appeals) Annexure-C are hereby quashed.

No order as to costs.

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